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## Sixth Committee

**Summary record of the 23rd meeting**
**Held at Headquarters, New York, on Monday, 8 November 2004 at 9.30 a.m.**

*Chairman*: Mr. Bennouna ..... (Morocco)
*later*: Mr. Simon (Vice-Chairman) ..... (Hungary)

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*The meeting was called to order at 9.45 a.m.*

**Agenda item 144: Report of the International Law Commission on the work of its fifty-sixth session (*continued*) (A/59/10)**

1. **Mr. Peh** (Malaysia), referring to the draft articles on responsibility of international organizations, said that in draft article 1, paragraph 2, the word "international" should be inserted before "responsibility", and the phrase "of which the State is a member." should be added at the end of paragraph. In draft article 2, for the purpose of clarity, the term "other entities", should be defined clearly or, alternatively, certain criteria should be specified. With respect to draft article 6, relating to *ultra vires* conduct of organs or agents of an international organization, due consideration should be given to the validity of the conduct of the organs or agents prior to attributing that conduct to the organization. It would be unjust to attribute the conduct to the organization when the conduct had clearly exceeded the authority of the organs or agents, or when it obviously contravened the instructions of the organization.

2. Turning to the draft articles on shared natural resources, he welcomed the Special Rapporteur's second report (A/CN.4/539), and noted that due to the sensitivity expressed concerning the term "shared resources", the draft articles focused on the sub-topic "transboundary groundwaters", without using the term "shared". He also noted that although "groundwater" was used in the Special Rapporteur's report, the preferred term in the draft articles was "aquifer".

3. Since the draft articles sought to regulate the use, protection, preservation and management of transboundary aquifer systems, Malaysia wished to propose amendments to draft article 2. In paragraph (a), the phrase ", sand, gravel, or soil" should be inserted after "formation", and in paragraph (b), "sand, gravel, or soil" should be inserted after "formations,".

4. With regard to draft article 4, his delegation would welcome clarification of the concept of "significant harm" and of the criteria for determining when "harm" constituted "significant harm".

5. In relation to draft article 6, the exchange of certain data and information might be inappropriate, as it might have adverse implications for the national interest of an aquifer system State. He therefore proposed that such exchanges should be made subject to national interest considerations, including security.

6. **Mr. Loizaga** (Paraguay), referring to chapter VI of the Commission's report, expressed support for the Special Rapporteur's proposal to focus on the sub-topic "transboundary groundwaters" without using the term "shared". He welcomed the observation in paragraph 115 of the report that groundwaters must be regarded as belonging to the State where they were located, along the lines of oil and gas, and could not be considered a universal resource. As a Guarani aquifer system State, Paraguay attached great importance to that concept of ownership, which also involved the principle of permanent sovereignty over natural resources, as embodied in General Assembly resolution 1803 (XVII).

7. In that regard, he referred to the ad hoc high-level working group on the Guarani aquifer set up by the States members of the South American Common Market (MERCOSUR) to draft an agreement to establish the principles and criteria to safeguard the rights of those States over their groundwater resources. He noted in that connection, that the member States had adopted basic principles regarding the Guarani aquifer, stating their position that groundwaters belonged to the territorial dominion of the State under whose soil they were located and that the Guarani aquifer was a transboundary aquifer belonging exclusively to the four MERCOSUR countries. Furthermore, the four-year, World Bank-sponsored technical project on the environmental protection and sustainable development of the Guarani aquifer system was expected to improve understanding of that important natural resource. Paraguay and the other MERCOSUR member States were convinced that the technical data they would continue to provide would be crucial to the elaboration of documents by the Commission, fully upholding the principle of the sovereignty of States over their natural resources.

8. **Ms. McIver** (New Zealand), referring to the topic "responsibility of international organizations", said that the conduct of organs or agents placed at the disposal of an international organization included the situation of peacekeeping forces, and that the attribution of conduct to the international organization or relevant State was a potentially difficult issue. New Zealand supported the test of effective control, as favoured by the Commission in draft article 5.

9. In response to the Commission's request for comments on specific issues relating to the Special Rapporteur's next report, and with regard to the question raised in paragraph 25 (a) of the Commission's report, she said her delegation believed that the Commission should not delve too deeply, if at all, into the question of breaches of obligations that an international organization might have towards its member States or agents under the rules of the organization.

10. With regard to the question mentioned in paragraph 25 (b), her delegation had some concerns about necessity being invoked by a State as a ground for precluding the wrongfulness of an act that would otherwise be contrary to international law. Any suggestion that an international organization could invoke necessity in similar circumstances would be even greater cause for concern, as her delegation had difficulty envisaging what could constitute the "essential interest" of an international organization that could be protected against a "grave and imminent peril".

11. With regard to the question referred to in paragraph 25 (c), concerning the responsibility of an international organization in connection with the wrongful act of a State or another organization, her delegation considered that the organization and the State should both be regarded as responsible under international law, even if the State's wrongful conduct was not specifically requested, but only authorized, by the organization.

12. Turning to the topic "Shared natural resources", she said that as a remote island country, New Zealand did not have transboundary groundwaters, but was nonetheless aware of the importance of such resources in many parts of the world. The subject involved a high level of scientific and technical complexity and her delegation wished to assure the Special Rapporteur of its continued support for the success of his work in that regard. Although New Zealand, having no transboundary aquifers, was not in a position to provide information about their allocation and management, her delegation wished to make some general comments of relevance to the general framework proposed by the Special Rapporteur and the principles to be incorporated in the draft articles. Since the characteristics of most aquifers differed vastly from those of surface waters, which were covered by the 1997 Convention on the Law of the Non-navigable Uses of International Watercourses, and since pollution of aquifers might prove particularly difficult to clean up, the question arose as to whether the principles and rules relating to those aquifers should place greater emphasis on environmental protection and pollution prevention.

13. Lastly, she observed that the principles of equitable use and reasonable utilization were not easy to apply in relation to an aquifer system that received no recharge and was therefore non-renewable. It was not clear how meaning could be attributed to that concept in that context but consideration might be given to the idea that transboundary aquifers should be utilized at rates commensurate with the ability of the States concerned to ensure alternative water supplies for their people.

14. **Ms. Huh** Jung-ae (Republic of Korea), referring to the draft articles on responsibility of international organizations, said her delegation accepted draft article 4, paragraph 3, but felt that the definition of "rules of the organization" in paragraph 4 was unclear. It believed that "decisions, resolutions and other acts taken by the organization" were equivalent to the concept of established practice of the organization.

15. In addition, it wondered whether "other acts taken by the organization", without any further qualification, could be regarded as amounting to rules of the organization. It proposed that the Commission should explore whether certain conditions might be necessary for such acts to constitute rules of the organization. An analogy could be drawn in that connection with the *North Sea Continental Shelf Cases*, in which the International Court of Justice had observed that State practice must have been both extensive and virtually uniform in order to constitute a settled practice under customary international law.

16. Concerning draft article 5, her delegation considered that the test of effective control in relation to the question of attribution must reflect the development of recent jurisprudence on that issue. In the *Military and Paramilitary Activities in and against Nicaragua case*, the International Court of Justice had outlined the test of effective control, according to which a State must have issued specific instructions and directions to its agent regarding the commission of specific acts, in order for the acts of that agent to be attributable to that State. By contrast, it was noteworthy that the Appeals Chamber of the

International Criminal Tribunal for the Former Yugoslavia in the *Prosecutor v. Dusko Tadic* case had held that the effective control test propounded by the International Court of Justice was at variance with international judicial and State practice. The Chamber had therefore held that the less stringent test of "overall control" by a State was sufficient to attribute the acts of any hierarchically organized groups, such as armed forces, to that State. The overall control test did not go so far as to require the issuance of specific orders for specific acts but required a State's supervision and planning of acts of an agent or organization.

17. Her delegation therefore proposed that the Commission should give further thought to the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia in order to determine an adequate criterion for the attribution of conduct to an international organization. Furthermore, the test of control would be pivotal in resolving the question of attribution of the conduct of a State's organ arising from the situation envisaged in draft article 5, either to that State or to an international organization. Paragraphs (9) and (10) of the commentary to draft article 5 seemed to imply that acts by an organ of a State could be imputable to that State, provided that an international organization did not exercise "exclusive command and control" over the organ. Her delegation therefore suggested that the Commission should formulate two separate provisions in draft article 5 based on the threshold of control by an international organization over a State's organ: the first should cover attribution of the acts of an organ of a State to an international organization, and the second should cover attribution of the act of an organ of a State to that State. Further study of international case law, State practice and the established practice of international organizations was necessary if two provisions were to be formulated.

18. **Ms. Zanelli** (Peru) commenting on the topic "Shared natural resources", commended the Special Rapporteur's decision to focus on the sub-topic "transboundary groundwaters", without using the term "shared", thus taking into account the concerns expressed about potential misconceptions to which use of that term might give rise relating to the concepts of the common heritage of mankind and shared ownership. Peru wished to reiterate the importance of the sovereignty of States over their natural resources, and specifically over resources underlying their territory. The draft articles should state, possibly in the preamble, that groundwaters belonged exclusively to the State in whose territory they were located, and that such States had dominion over them.

19. With regard to the final form of the draft articles, Peru would prefer guidelines which could be used by States in setting up bilateral or regional arrangements or agreements, taking into account the particular characteristics of each situation and the existence of prior agreements.

20. Peru would continue to accord special attention to the topic and was currently preparing its reply to the Commission's questionnaire with a view to supporting the work on the codification of State practice in that area.

21. With regard to chapter XI of the Commission's report, entitled "Other decisions and conclusions of the Commission", her delegation supported the Commission's decision to include the topic "Obligation to extradite or prosecute (*aut dedere aut judicare*)" in its programme of work because of that topic's importance in establishing the rule of law and combating impunity.

22. **Ms. Zabolotskaya** (Russian Federation) said that the responsibility of international organizations was a topic of great practical significance. The Commission was right in maintaining that the conduct of an organ or agent of an international organization in the performance of their functions must be deemed an act of that organization, a view that was supported by the advisory opinion of the International Court of Justice on *Reparation for injuries suffered in the service of the United Nations*. The inclusion of the criterion of effective control in draft article 5 had been an important step. The criterion for the attribution of conduct to an international organization employed in draft article 6 seemed to differ from that used in draft article 4; it might therefore be advisable to apply the criterion laid down in draft article 4, paragraph 1, to all conduct. It was unclear why the Commission, when defining the notion of the "rules of the organization" in draft article 4, paragraph 4, had departed from the perfectly satisfactory definition given in article 2 (j) of the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations. Draft article 7 posed no problems, since the focus on the attribution of

responsibility rather than on wrongful conduct was correct.

23. Turning to the questions raised in paragraph 25 of the report, on which the Commission had requested the Committee's guidance, and referring to paragraph 25 (a), she said that the constituent instruments of international organizations were indubitably part of international law and, that being so, a breach by an international organization of its obligations to its member States and, possibly to its agents, could entail the organization's responsibility under international law. While there seemed to be no grounds for excluding that topic from the draft articles, it was unnecessary to immediately draft special provisions on it with regard to paragraph 25 (b), it was impossible to rule out the possibility that an international organization might, at some time, have to rely on necessity as a circumstance precluding wrongfulness, for example in order to prevent damage to the territory of States hosting a nuclear research facility where extremely hazardous research was being undertaken by the organization. Concerning paragraph 25 (c), in the event of an international organization requesting a member State wittingly to carry out a wrongful act, it was obviously possible to speak of the joint responsibility of the international organization and the member State, but the position would be different if the international organization's request had not called for the wrongful conduct in which the member State had engaged. On the other hand, if a member State's wrongful conduct had been authorized by an international organization, even *ex post facto*, that would also give rise to the joint responsibility of the organization and the State.

24. **Ms. De Armas García** (Cuba), referring to the topic "Responsibility of international organizations", said that, although the Commission had adopted the appropriate method when drawing up the four draft articles on the attribution of conduct, the definition of "international organization" in draft article 2 departed from that to be found in article 2 (i) of the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations. Moreover the reference to "other entities" constituted a progressive development of the subject matter which was not consonant with international practice. For those reasons, it would be advisable for the draft articles to return to the more restrictive wording of the 1986 Convention.

25. With reference to paragraph 25 (a) of the Commission's report, it would be useful for the Commission to consider breaches of obligations that an international organization might have towards its member States or agents, since by studying that topic, the Commission would enhance legal security in relations between States and international organizations of which they were members. With regard to paragraph 25 (b), an international organization should, in principle, be able to invoke necessity as a circumstance precluding international responsibility for a wrongful act when such an act would be the only means of safeguarding the interests of the organization against a grave and imminent peril, but the Commission would have to ensure that the wording it chose would rule out the indiscriminate use of the concept as a means of justifying other wrongful acts of international organizations. The text of draft article 25 on State responsibility offered a good basis for the drafting of such a provision. Concerning paragraph 25 (c), an international organization should, generally speaking, be responsible for wrongful acts committed by one or more of its member States in compliance with a request on the part of the organization. In fact, both the member State and the international organization should be held responsible. On the other hand, if the wrongful act of a State was not requested, but merely authorized by the organization, it would be necessary to analyse the extent of the organization's participation in the wrongful act before deciding whether it was responsible for the State's conduct. If the wrongful act had been carried out by the State on its own behalf and on that of the organization with the latter's prior authorization, the organization should be held jointly responsible, but if authorization had been given *ex post facto* it would be essential to look at the organization's rules in order to ascertain its relationship with its member States. Those issues should be dealt with in the third report.

26. **Mr. Rodiles Bretón** (Mexico), referring to chapter V of the Commission's report, said that the draft articles on the attribution of conduct to international organizations would help to consolidate the general rules on the subject. The definitions of "agents" and "rules of the organization" in draft article 4 ought to be moved to draft article 2, as suggested in the report, since those terms had normative implications for the draft articles as a whole. Although doubts had been expressed as to whether effective

control was an acceptable criterion for attributing the conduct of organs or agents placed at the disposal of an organization, his delegation considered it to be the most objective and effective one. There might, of course, be cases in which it would be hard to attribute conduct on that basis, but practice and the rulings of international courts would probably make it possible to overcome those difficulties.

27. Turning to the issues on which the Commission had requested Member States' views, in paragraph 25 of the report, he said with regard to paragraph 25 (a) that the Commission should consider breaches of obligations that an international organization might have towards its member States or its agents, insofar as those obligations were not delimited solely by the rules of the organization but constituted obligations under international law. With regard to paragraph 25 (b), while necessity would generally preclude the international responsibility of an organization for a wrongful act, the circumstances in which necessity could be invoked would have to be even more exceptional than those applying to a State, since the essential interests of an organization could not be equated with the essential interests of a State. It was therefore doubtful whether the inclusion of that issue was advisable. The question raised in paragraph 25 (c) was very difficult and, although his Government was inclined to consider that the State and the organization would be responsible in both cases, it agreed that the question required more careful consideration.

28. Turning to chapter VI of the report, he said that the Commission's work on shared natural resources would help to fill the considerable gap in international law on the subject. Transboundary groundwaters were of such importance that they should be tackled before oil and gas. His Government had joined in efforts to conserve them by adopting the National Water Act which established mechanisms for ensuring better use of water.

29. The 1997 Convention on the Law of the Non-navigational Uses of International Watercourses could serve as the basis for broaching the subject of transboundary groundwaters, particularly in respect of the application of general principles of cooperation and measures for preventing, reducing and controlling pollution. Nevertheless, once the scope of the Commission's work had been defined, a special regime would have to be devised for transboundary aquifers which were non-renewable or slow to recharge. The general framework proposed by the Special Rapporteur was therefore an acceptable starting point, but it would have to evolve as work progressed. The use of the term "transboundary aquifer systems" and the elimination of the terms "confined", "unrelated" and "not connected" had been judicious and an article on the relationship between the new aquifers regime and the regime under the 1977 Convention might remove any quandaries as to the application of the Convention to aquifers.

30. The principles governing the uses of aquifer systems should be analysed with care to ensure that they were appropriate. The principle of equitable use should certainly be included, although it would be preferable to speak of "equitable exploitation". The principles of reasonable utilization, optimum use and participation by States should be studied in depth, because those resources, unlike surface waters, were non-renewable or slow to recharge. Furthermore, it was important to include a reference to the principle of sustainable use. The obligation not to cause harm could be incorporated in the part concerning the prevention of pollution and the protection of aquifers. Draft article 4 focused on harm caused to aquifer system States and did not pay sufficient heed to the protection of the aquifer and the water it contained. Moreover, the article should also specify, in the event of irreparable damage to a transboundary aquifer, what type of responsibility might be entailed and the conditions on which affected States might claim compensation. With regard to draft articles 5 and 6, concerning respectively the obligation to cooperate and exchange of information, both articles should contain a reference to the importance of capacity-building in those areas and to the need to cooperate and exchange information about matters connected with environmental protection and the sustainable use of aquifers.

31. **Mr. Hmoud** (Jordan), referring to chapter V of the report, said that the Commission's work was valuable since there was little jurisprudence offering guidance on the issue of the responsibility of international organizations. Although it had been a good idea to approach the topic by codifying existing customary rules and judicial principles, while at the same time developing new rules where necessary, the Commission should not rely too heavily on unpublished or internal memorandums of organs of international organizations as indication of established practices.

32. The approach adopted in draft articles 4 to 7 was welcome. The focus on conduct rather than responsibility would make it possible to separate the issue of attribution from that of the content and consequences of responsibility. An explicit provision on dual or multiple attribution should be included in the draft articles in order to avoid possible complications in the future with regard to the interpretation or implementation of the draft articles. Draft article 4, paragraph 3, should be recast to make it clear that the rules of the organization were not the sole means of determining the functions of an organization's organs and agents. A factual test to ascertain whether an agent was entrusted with the performance of functions of that organization as a means of deciding whether its conduct could be attributed to the organization was the test applied by the International Court of Justice and was definitely preferable to the official status test, and its inclusion in that article and in draft article 5 was therefore welcome. If the circumstances indicated that an organization had exercised effective control over the conduct in question, the latter should be attributed to the organization, notwithstanding any formal assertion or agreement to the contrary. However, the factual test should apply not only to the conduct but also to whether the organ or agent had been placed at the disposal of the international organization. The commentary to draft article 5 inadvertently confused the issue of command of the organ or agent with that of effective control over the conduct. It might be advisable to replace the term "at the disposal of" in draft article 5 with "under the effective control of". Draft article 5 likewise failed to answer the question of attribution in the case of a joint operation where it was hard to distinguish between areas of effective control. While draft article 6 had correctly established the principle that ultra vires acts by an organ or agent should be attributable to the international organization, it was unfortunate that the commentary dwelt on the distinction between on-duty and off-duty conduct, as that confused the test established in that article, which was whether the organ or agent was acting in that capacity and whether it had exceeded its authority or contravened instructions. The content of draft article 7 should be reconsidered, as it contradicted the factual test for attribution. There did not appear to be any useful reason to attribute an act to an international organization which acknowledged or adopted the conduct as its own, nor was there any jurisprudence or practice to support that approach.

33. **Ms. Masyruby** (Venezuela) said that her delegation supported the Special Rapporteur's proposal not to use the imprecise term "shared natural resources" (A/59/10, para. 83), whose interpretation might give rise to serious disagreements. Venezuela had always argued against the use of the term in legal instruments adopted by the international community.

34. **Ms. Odaba-Mosoti** (Kenya) said that the Special Rapporteur's initial work on shared natural resources formed a solid basis for further consideration of what was a complex topic; her delegation commended his approach of focusing on transboundary groundwaters.

35. While the Convention on the Law of the Non-navigational Uses of International Watercourses provided the basic principles for guiding the Commission's work, it had so far received little support from States; replication of those principles might therefore be counterproductive, especially with regard to fossil aquifers, which were expressly excluded from the scope of the Convention. On the other hand, some underground water systems were linked with surface waters, in which case the principle of the Convention would remain relevant.

36. More attention should be given to the management and sharing of confined aquifers, taking into account their non-renewable nature. It might be worth considering whether non-renewable underground water resources should be governed by the same sort of regime as governed other depletable shared natural resources and deciding which rules of international environmental law would be applicable to them.

37. A comprehensive study of State practice might be a useful point of reference for the future work. It was to be hoped that the replies to the Special Rapporteur's questionnaire would provide some useful insights. The outcome of the work might take the form of a framework document or guiding principles to enable States to elaborate specific national and regional arrangements.

38. **Ms. Telalian** (Greece), referring to chapter V of the report, said that the four new draft articles on responsibility of international organizations appeared to be adequately formulated. Her delegation welcomed in particular the adoption in draft article 4, paragraph 2, of a broad definition of agent of an

international organization, based on the advisory opinion of the International Court of Justice on *Reparation for injuries suffered in the service of the United Nations*, which emphasized not only the official character of the agent but also the fact that he was a person through whom the organization acted. The definition was further clarified by article 4, paragraph 1, which excluded private actions of the organ or agent from attributable conduct. She welcomed the inclusion in article 4, paragraph 4, of "other acts taken by the organization" and its "established practice" on part of the corpus of law constituting the rules of the organization. Those two elements would be invaluable in determining the functions of organs and agents.

39. The inclusion in draft article 5 of the criterion of effective control was also welcome, for the criterion was deeply rooted in the practice of the United Nations within the framework of peacekeeping operations. If an act of a peacekeeping force was imputable to the United Nations and violated international law, it would entail the international responsibility of the Organization and its liability for compensation. The criterion would also be decisive in the case of joint or concurrent attribution.

40. The Commission had stressed that draft article 6 covered both conduct exceeding the competence of the organization and conduct exceeding the authority of its organ or agent, but the text covered explicitly only the second case. However, the Commission was right to argue that such conduct was attributable to the organization when linked with the organ's or agent's official functions. The Commission was also correct in stating, with regard to draft article 7, that the competence of the international organization was governed by its own rules.

41. Turning to the questions on which the Commission had requested the views of States, she said, with regard to paragraph 25 (a) of the report, that the Commission should indeed consider possible breaches by an international organization of its obligations towards its member States. The rules of an organization formed part of the international legal order, for they derived from an international treaty, i.e. the constituent instrument of the organization. A breach of an organization's rules thus entailed the international responsibility of the author, just as any breach of any other international norm. Moreover, the Commission had concluded, with respect to the responsibility of States for internationally wrongful acts, that the origin of the international obligation breached was of no consequence to the international responsibility of the State committing the wrongful act. A different approach with regard to the responsibility of international organizations would disturb the unified regime on the origin of international obligations.

42. On the other hand, the violation of the rules of an organization with respect to its agents merited a more nuanced approach, for private persons were not subjects of international law and could not assert the fulfilment of any other international obligations, except for the obligations of other subjects of international law stemming from the rules on the protection of human rights. A distinction should therefore be made between the violation of rules of an organization incorporating such human rights rules and the violation of other rules governing the organization's agents. The violation of those latter rules should constitute the object of a complaint only to the extent and within the mechanisms provided by the organization itself, whereas violation of the former rules should constitute the object of a complaint outside the framework of the organization, in accordance with the procedures of general international law. The Commission should therefore consider only violations in the first category.

43. With regard to paragraph 25 (b), her delegation would be reluctant, given the lack of relevant practice, to include in the draft article at the current stage the plea of necessity as a circumstance precluding wrongfulness in connection with the responsibility of international organizations.

44. The third question, set forth in paragraph 25 (c), raised issues requiring further definition. When a State acted to implement a measure which it was obliged to implement under the rules of the organization, the organization might be held responsible if the measure violated a rule of international law. Her delegation therefore endorsed the view expressed by the Special Rapporteur in paragraph 12 of his report (A/CN.4/541) that the attribution of international responsibility might be distinct from the attribution of wrongful conduct of a person towards a subject of international law. The Commission had worded the question correctly: in order for the organization to be regarded as responsible under international law, the organization itself, and not only its member States, must be independently bound by the obligation breached. If only the member State had assumed the obligation breached by the measure taken by the organization, the organization could not

be held responsible. The question of the possible exclusion of a State from responsibility in that respect should therefore be treated under the law of the international responsibility of States and not included in the current project.

45. **Mr. Melescanu** (Chairman of the International Law Commission), introducing chapters VIII, IX and X of the Commission's report, and referring first to chapter VIII, said that, in accordance with the recommendations of the Working Group on Unilateral Acts of States, the Special Rapporteur had taken into account in his seventh report (A/CN.4/542 and Corr.2 and Corr.3) the need to identify the relevant rules for codification and progressive development. The report dealt in particular with acts and declarations producing legal effects and with conduct which could have legal effects similar to unilateral acts. In order to determine the criteria for the classification of acts and declarations, the Special Rapporteur had used three generally established categories: acts by which a State assumed obligations (promise and recognition); acts by which a State waived a right (waiver); and acts by which a State reaffirmed a right or a claim (protest). Although notification was formally a unilateral act, its effects varied with the situation to which it referred. The Special Rapporteur's conclusions were designed to facilitate the consideration of the topic and the identification of generally applicable principles.

46. The debate in the Commission had shown that, although the seventh report gave several examples of unilateral acts, a more rigorous analysis would be required before it could be concluded that there were generally applicable rules. Furthermore, since there were few studies analysing the context essential to an understanding of unilateral acts, the Commission had to concentrate on examining some examples and trying to draw up a comparative table with a view to identifying rules common to those examples. The Working Group had continued to work on the basis of the recommendations made in the previous year with a view to providing guidance for the future work. It had decided to select a sample of unilateral acts sufficiently documented to allow for an analysis in depth. It had also established a grid, described in paragraph 247 of the Commission's report, permitting the use of uniform analytical tools. The members of the Working Group had shared out a number of studies to be effected in accordance with the grid and transmitted to the Special Rapporteur before 30 November 2004. The synthesis based exclusively on those studies would be entrusted to the Special Rapporteur, whose conclusions would be presented in his eighth report.

47. The lack of information on State practice was a major difficulty of the topic. The Commission had thought that the study of such practice should deal with the evolution or life of unilateral acts, with certain aspects, such as author, competence, form, content, and so on, given more detailed treatment, with a view to determining whether general rules or principles existed. The Commission would therefore welcome comments from States in that regard.

48. Turning to chapter IX of the report, he said that the Commission had adopted five draft guidelines on widening the scope of reservations and on modification and withdrawal of interpretative declarations. It had also considered the Special Rapporteur's ninth report (A/CN.4/544), dealing with the definition of objections, and had referred to the Drafting Committee draft guidelines 2.6.1 and 2.6.2.

49. Draft guideline 2.3.5 (Widening of the scope of a reservation) stated that the modification of an existing reservation for the purpose of widening its scope should be subject to the rules applicable to the late formulation of a reservation. If an objection was made to that modification, the initial reservation remained unchanged. Thus, if a State or an international organization wished to widen the scope of its reservation, the provisions applicable to late formulation must be applied in full and for the same reasons. Furthermore, in such a case it was essential to obtain the unanimous consent of the other parties to the widening of the scope of the reservation. No encouragement should be given to the late formulation of limitations on the application of a treaty. Depositaries treated "widening modifications" in the same way as late reservations.

50. Draft guideline 2.3.5 referred implicitly to draft guidelines 2.3.1, 2.3.2, and 2.3.3, but the transposition of the rules applicable to the late formulation of reservations to the widening of an existing reservation could not be unconditional. In the case of the late widening of the scope of a reservation, however, the reservation had already been established and produced the effects recognized by the Vienna Convention. The initial reservation thus remained unchanged in the event of an objection to the widening of its scope. The Commission had not considered it necessary to define

the "widening of the scope of a reservation" in a draft guideline because its meaning was obvious. However, a definition of that term had been included in the commentary.

51. Draft guideline 2.4.9 stated the principle that an interpretative declaration might be modified at any time unless the treaty provided that it might be made or modified only at specified times. Despite the paucity of examples in the practice, the draft guideline seemed to flow logically from the very definition of interpretative declarations.

52. Draft guideline 2.4.10 dealt with conditional interpretative declarations, the limitation and widening of the scope of which were governed by the rules respectively applicable to the partial withdrawal and the widening of the scope of reservations. Unlike the modification of simple interpretative declarations, the modification of conditional interpretative declarations was similar to a late formulation, which could be established only if it did not encounter the opposition of any one of the other parties. Although it might be difficult in some cases to determine whether the purpose of a modification was to limit or to widen the scope of a conditional interpretative declaration, the Commission had concluded that there was no reason to depart from the rules relating to the modification of reservations and that reference should therefore be made to the rules applicable respectively to the partial withdrawal and to the widening of the scope of reservations. In the latter case, the rules were the same as the ones contained in draft guideline 2.4.8 on the late formulation of a conditional interpretative declaration, which made the late formulation of such a declaration subject to the unanimous consent of all the parties.

53. Draft guideline 2.5.12 on withdrawal of interpretative declarations provided that, since an interpretative declaration could be formulated at any time, it could also be withdrawn at any time without any special procedure. The few cases in the practice confirmed that that was compatible with the very informal nature of interpretative declarations. Withdrawal must comply with the few formalities stated in draft guidelines 2.4.1 and 2.4.2.

54. Draft guideline 2.5.13 provided that the withdrawal of a conditional interpretative declaration was governed by the rules applicable to the withdrawal of reservations, which were contained in draft guidelines 2.5.1 to 2.5.9. The Commission would take a final decision on conditional interpretative declarations when it had concluded its consideration of the rules relating to both those declarations and reservations.

55. The Commission would welcome comments from Governments on the question raised in chapter III.F of its report, concerning the terminology to be used.

56. With regard to chapter X, "Fragmentation of international law", the Study Group on the topic had held useful substantive discussions on the function and scope of the *lex specialis* rule and the question of self-contained regimes. It had confirmed its wish to develop a substantive, collective document incorporating much of the substance of the individual studies produced by its members, as supplemented and modified by discussions within the Group.

57. In a thought-provoking study, the Chairman of the Study Group had, on the basis of doctrine and case law, considered the application of the *lex specialis* rule and the operation of self-contained regimes from a "systemic" perspective and concluded that general international law functioned behind all special rules and regimes. He had also suggested that there was an informal hierarchy between sources of international law. Within the systemic context, the *lex specialis maxim* constituted a technique of legal reasoning, whether as an interpretative device or a conflict-resolution technique. No strict rule for its use could be laid down; much depended on the context and the normative environment. It could constitute an application or elaboration of the general law or an exception to it, while in some cases it was prohibited. One aspect of the rule — relating to regional regimes and regionalism — would be separately treated in 2005. The Study Group had endorsed the systemic approach. In addition, it had been suggested that a distinction existed between the use of *lex specialis* in respect of derogation of the law and its use in respect of the development of the law, while the closeness of the two aspects highlighted its informal nature and dependence on context. Similarly, with regard to the related distinction between the permissibility of a derogation and the determination of the content of the derogating rule in a situation where derogation might be prohibited, *lex specialis* might still be applicable as a development of the relevant rule. Some members of the Study Group had doubted that there was any hierarchy, whether formal or informal, between the

sources of international law. The priority normally given to a treaty over a general custom was due to the wish to give effect to the will of the parties rather than some hierarchy in law. There had also been some disagreement regarding the study's treatment of the possibility of derogating from general law. Except in the case of *jus cogens*, it remained unclear in what other circumstances derogation was permissible or impermissible.

58. With regard to self-contained regimes, which the Chairman had suggested should appropriately be called "special" regimes, the Study Group had taken note of the terminological insecurity in case law and doctrine. It had been agreed that the notion of "self-containedness" was not intended to convey anything more than the idea of "the speciality" of the regime. Indeed, the term was regularly employed in several senses: sometimes narrowly, to denote a special set of secondary rules; sometimes broadly, to refer to a special set of rules and principles — either primary or secondary — on the administration of a particular question; or functionally, to cover whole fields of specialization. Special regimes, as understood in the functional sense, merited further study for a full understanding of their relationship both with the general law and with the other two senses in which the special regimes were understood. There had also been broad agreement that general law continued to operate in various ways, even within special regimes. The relationship between such a regime and the general law could not, however, be settled by any general rule. As for the question of falling back on to general law following the failure of a special regime, the Study Group had emphasized that the question of whether or not regime failure had occurred ought to be interpreted by reference to the treaties constituting the regime itself, and it had been recognized that no general laws could provide for such an eventuality. It had, however, been suggested that it would be useful to study further the different permutations in which such failure could occur. It had also been suggested that it was for the parties to a regime to decide whether it had failed and what the consequences should be.

59. The Study Group had also discussed outlines prepared in respect of the four remaining studies. Concerning the study on the application of successive treaties relating to the same subject matter (article 30 of the Vienna Convention on the Law of Treaties), it had been acknowledged that most of article 30 did not pose dramatic problems of fragmentation. Only paragraph 4 (b) presented a situation in which an unresolved conflict of norms would arise. In that connection, it had been suggested that it might be useful to consider the treatment of the matter, and the choices made, by successive Special Rapporteurs on the law of treaties. The Study Group had endorsed the suggested focus on the question of whether limits could be imposed on the will of States that were parties to inconsistent treaties to choose which they would comply with and which they would have to breach. It had been suggested that article 41 of the Vienna Convention might provide some guidelines in the implementation of article 30.

60. With regard to the study on the modification of multilateral treaties between certain of the parties only (article 41 of the Vienna Convention on the Law of Treaties), the Study Group had noted that the article reflected a need for parties to allow the implementation of a treaty to develop by *inter se* agreement, while the relationship between the original treaty and the *inter se* agreement could sometimes be seen as the relationship between a minimum standard and a further development thereof. It therefore did not ordinarily pose difficulties of fragmentation. The conditions of permissibility of *inter se* agreements reflected general principles of treaty law that sought to safeguard the integrity of the treaty. Such conditions did not always, however, relate to the nature of the original agreement. Under the terms of article 41, paragraph 1 (b) (ii), they also related to the nature of a provision. Moreover, the consequences of impermissible *inter se* agreements were not expressly dealt with in article 41. In the view of the Study Group, both aspects required further analysis.

61. It had also been suggested that the differences between the terms "modification", "amendment" and "revision" in the application of article 41 needed further attention in order to clarify their usage in practice. A review of the relationship between the different principles of coherence, including the relations between articles 30 (subsequent agreements) and 41 (*inter se* modification) of the Vienna Convention and Article 103 of the Charter of the United Nations (priority of Charter obligations) had also been suggested. In addition, the role that the "modification" of *inter se* agreements could play in reducing fragmentation should be explored.

62. With regard to the interpretation of treaties in the light of "any relevant rules of international law applicable in relations between the parties" (article 31 (3) (c) of the Vienna Convention on the Law of Treaties), in the context of general developments in international law and concerns of the international community, the Study Group had emphasized that article 31, paragraph 3 (c), applied only when there was a problem of interpretation. The provision related not only to other treaty rules but also to other sources of international law, such as customary law or the general principles recognized by civilized nations. The future study might therefore consider how customary law and other relevant rules were to be applied. Further attention should also be given to the relationship between article 31, paragraph 3 (c), and other rules of treaty interpretation, such as good faith or the object and purpose of a treaty under article 32. The existence of "mobile" concepts and the emergence of standards generally accepted by the international community should likewise be taken into account. The question had also arisen as to whether the way inter-temporal law had been seen at the time of the adoption of the Vienna Convention in 1969 remained valid, in view of the many transformations in the international system since that time.

63. With regard to the outline on hierarchy in international law: *jus cogens*, obligations *erga omnes*, Article 103 of the Charter of the United Nations, as conflict rules, the Study Group had emphasized that the study should be practice-oriented and should refrain from identifying general or absolute hierarchies. The reference to "conflict rules" was intended to be understood as meaning that hierarchy should be treated as an aspect of legal reasoning within which it was common to use such techniques to set aside less important norms by reference to more important ones. The Group endorsed the suggested focus on the possible conflicts between the three hierarchical techniques and on any conflicts within each category. It would also be useful to analyse the differences between jus cogens and erga omnes obligations: the latter might not involve hierarchical relationships in the same way as the former. The use of a hierarchical relationship — whether, for example, State responsibility was attributable when an inferior rule was set aside by a superior one — should also be considered. Above all, examples of the use of hierarchical relationships in practice and doctrine in order to solve normative conflicts should be provided.

64. The Study Group had sought to stress the unity of the international legal system as well as accentuating the importance of general international law. Thus, while hierarchy might sometimes bring about fragmentation, in most situations it was used to ensure the unity of the international legal system as a whole.

65. **The Chairman** expressed the hope that the Commission's deliberations on various theoretical points of international law would shortly bear fruit in the form of guidelines on reservations to treaties and unilateral acts of States, together with practical recommendations on aspects of the fragmentation of international law.

66. **Ms. Schlegel** (Germany), referring to chapter VIII of the report, said that her delegation would submit detailed comments on the topic "unilateral acts of States" in writing. Meanwhile, she noted that given the great variety of unilateral acts, the complexity of the topic made the Commission's task of defining and formulating clear guidelines very difficult. It was essential to draw a distinction between unilateral acts that constituted an expression of will or consent and those that had a legal effect. The Special Rapporteur's division of unilateral acts into three categories — promise and recognition; waiver; and protest — should help to increase legal certainty. The Commission should, however, develop a clear definition of unilateral acts of States having a legal effect, while at the same time ensuring that States enjoyed sufficient flexibility for acts of a political nature.

67. In order that unilateral acts and their legal consequences could be comprehensively categorized, a further study of State practice and a clear-cut distinction between the various forms of unilateral acts of States were needed. To that end, States would need to provide further information. As well as making a synthesis of all the studies submitted, the Special Rapporteur should also aim to retain the flexibility that was central to the attractiveness of unilateral acts as a means of State conduct. Since general rules could hamper that flexibility, one way of maintaining the balance between legal certainty and flexibility would be to elaborate general rules applying only to specific forms of unilateral acts, such as acts of recognition.

68. With regard to chapter IX, her delegation attached great importance to the Commission's work on reservations to treaties. The central question for her delegation, when assessing reservations, was whether it

should respond with an objection, most crucially in the case of reservations made contrary to the exceptions laid down in article 19 (a), (b) and (c) of the Vienna Convention on the Law of Treaties. Of particular interest were cases where a reservation was, in the judgement of another State party, incompatible with the object and purpose of the treaty concerned. Did such reservations have legal effect? And must or should an objection be made to them? The question was left open in the Vienna Convention and the Special Rapporteur therefore planned to focus on the question of how to characterize a reservation that was not permitted under article 19 of the Convention. The Commission had addressed the issue in another context, namely in the discussion of draft guideline 2.1.8 [2.1.7 bis] "Procedure in case of manifestly [impermissible] reservations", in which it had not been possible to agree on the word "impermissible", with the result that the words "inadmissible" and "invalid" had been proposed as alternatives. The terminological question should also be seen in relation to the various schools of thought on the legal consequences of such reservations. Although they were invalid under international law, thus requiring no objection, experience showed that hardly any State refrained from an objection on those grounds. Germany, in objecting to reservations it considered incompatible with the object and purpose of a treaty, did so in order to indicate criticism to the reserving State, which might thus be encouraged to withdraw its reservation. The terms "valid" or "invalid" should therefore not be used to qualify such reservations, since they seemed akin to the term "nullity" and would thus not have the desired effect of encouraging objections. As for the choice between the words "impermissible" and "inadmissible", she noted that, in the formulation of objections, the following form of wording seemed to have evolved: "according to established customary law, reservations incompatible with the object and purpose of a treaty shall not be permitted". The related terms "permissibility" and "permissible/impermissible", which seemed to enjoy broad acceptance, indicated an objective yardstick and should therefore be adopted. Her delegation's suggestion for the corresponding French term was the word "*illicite*".

69. In reference to chapter X, she observed that States were progressively more willing to subject their bilateral and multilateral relations to an international legal framework. That development had, on the one hand, strengthened international law; on the other hand, it had contributed to the increasing number of conflicting norms and legal regimes. To ensure stability and legal certainty in international relations, States needed practical guidelines on how to deal with the conflicts caused by fragmentation. Her delegation appreciated the efforts by the Study Group on the topic to move in that direction, beginning with a substantive study covering such norms as the relevant date when applying the *lex posteriori* rule, where the question was whether the applicable date was the date of ratification or the date on which a treaty came into force, since the period of time between the two might vary from one treaty to the next. Lastly, her delegation welcomed the fact that the Chairman of the Study Group was to prepare a supplementary report on the progressive regionalization of international law, since that had been the subject of its comments on the Commission's first report on fragmentation of international law.

70. *Mr. Simon (Hungary), Vice-Chairman, took the Chair.*

71. **Mr. Guan Jian** (China), referring to chapter VIII of the report, noted that the seventh report of the Special Rapporteur on unilateral acts of States (A/CN.4/542, Corr.2 and Corr.3) enumerated many facts without properly taking up the questions asked in recommendation 6 put forward during the fifty-fifth session of the Commission, namely, the reasons for the unilateral act of the State, the criteria for the validity of the commitment of the State and the conditions under which a unilateral commitment could be modified or withdrawn. His delegation endorsed the Commission's decision to establish an open-ended Working Group on Unilateral Acts of States to study selected cases, and supported continued work on the topic in accordance with the recommendations adopted at the Commission's fifty-fifth session.

72. On the question of whether political unilateral acts should be covered under the topic, his delegation felt that there was no clear demarcation between legal acts and political acts; for some political acts could also be legal acts and produce legal consequences. In order to prevent unauthorized unilateral acts of States, there should be some restrictions on who could perform unilateral acts on behalf of States. On procedural issues, such as the interpretation, modification, suspension or termination of unilateral acts, provisions could be modelled on those in the Vienna Convention on the Law of Treaties. In the Special Rapporteur's report, some examples of

unilateral acts had incorrectly been cited as acts of States, when the actor was a non-State entity. As a body established by the General Assembly, the International Law Commission was obligated to respect the relevant United Nations resolutions. Such mistakes should be avoided in future reports.

73. Turning to chapter IX of the report, he noted that in the view of the Special Rapporteur on reservations to treaties, the definition of objections to reservations should not prejudge the legal effects of the objections. Although no conclusion had been reached as to the validity of objections which did not have effects provided for in article 21 of the Vienna Convention on the Law of Treaties, such objections were nevertheless objections to reservations and should therefore be reflected in the definition. Article 19 of the Vienna Convention specified the circumstances in which a State could formulate reservations but did not state the legal consequences of violating the article. Although the responsibility a State might incur by formulating a reservation in violation of article 19 was unclear, in the view of his delegation it was unacceptable for a State objecting to a reservation to unilaterally claim the full applicability of a treaty between it and the reserving State. In determining what treaty relationship, if any, would exist between the reserving State and the objecting State, the intention of both parties should be taken into account.

74. **Mr. McRae** (Canada), referring to chapter X of the report, said that the work of the Commission's Study Group on Fragmentation of International Law, in particular the study on *lex specialis* and self-contained regimes, highlighted the difficulties and complexities of the topic. While the *lex specialis* rule appeared to be functioning effectively as an interpretative device and a rule of conflict resolution, it was in the area of self-contained regimes that the potential for fragmentation was most acute. The Study Group had identified three senses of the term "self-contained" regimes, one of which concerned areas of functional specialization, such as human rights law, World Trade Organization law ("WTO law") and humanitarian law. His delegation felt that the latter category needed to be further refined. Some areas of functional specialization, human rights law, for example, or the law of the sea, were only loosely self-contained. Although they had their own principles, institutions and teleology, those principles and rules were widely referred to and applied in different forums. In contrast, more "closed" self-contained regimes, such as WTO law, sought to maintain a monopoly over the interpretation and application of their law and purported to exclude recourse to other forums. International criminal law might over time become more self-contained in that sense. While it was true that general international law provided a normative background for WTO law, it was not clear how it would operate within that self-contained system. Difficult questions had arisen about whether the principles of general international law could supplement or modify the obligations set out in the WTO agreements.

75. The situation was more complex when the rules of the self-contained regime had developed sui generis and not from a broad international law base. Human rights law was grounded in a public international law tradition, and the links between general international law and human rights law were many. WTO law, on the other hand, had developed from a treaty regime that had operated generally in isolation from public international law, and some of its practitioners had denied any link at all. Canada did not wish to suggest that there was a crisis. Rather it raised the issues to suggest a fruitful avenue for deeper enquiry by the Study Group and the Commission, and it encouraged them to continue their work on a topic of increasing importance.

76. With regard to chapter VIII, on unilateral acts, Canada congratulated the Special Rapporteur on the compilation of a large body of material on State practice. Some important definitional and categorization tasks lay ahead. His delegation wondered whether the working definition of a unilateral act of a State as a statement expressing the will or consent by which a State purports to create obligations or other legal effects under international law was an adequate reflection of the practice compiled by the Special Rapporteur. It also had doubts whether the concept of "promise" was a useful category for some of the examples identified. For example, a statement that a Government intended to lower tariffs on goods from certain countries was a statement of intent but was hardly likely to be promissory. The recognition that different legal systems viewed the concept of a promise differently only reinforced the need for clearer definitions.

77. Although some members of the Commission felt that it was necessary to distinguish between legal and

political acts, there were many instances in which the categories would overlap. In interests of clarity, distinctions should be made between acts in terms of their legal consequences. One possible breakdown might distinguish acts that contributed to the development of customary rules of international law; acts that created other specific legal obligations; and acts that had other effects under international law. Inevitably there would be some overlaps, but the process of assigning unilateral acts to those categories would provide a better understanding of their nature and import. A typology of that kind would better enable the Special Rapporteur to separate relevant unilateral acts from those that were irrelevant for purposes of the study and to determine where the focus should lie. In the meantime, Canada shared the view that the topic was not yet ready for the formulation of draft articles.

78. **Mr. Bühler** (Austria), referring to chapter VIII of the report, said that in the seventh report of the Special Rapporteur on unilateral acts of States (A/CN.4/542, Corr.2 and Corr.3) a number of the instances of State practice cited involving Austria were misleading. Paragraph 46 of the report, in relation to recognition of States, referred to Austria's recognition of a diplomat as the Palestine Liberation Organization's official representative in Austria. It should be noted that Austria had at that time recognized the Palestine Liberation Organization as a representative of the Palestinian people but not as a State; a clear distinction should be made between recognition of an organization's official representative and recognition of a State. In paragraph 112 it was erroneously assumed that in 1999 Austria had closed its airspace to military flights by the North Atlantic Treaty Organization (NATO) as a protest against NATO attacks carried out on Yugoslavia, whereas it had done so because of its neutral status. Paragraph 177 of the report discussed the notification of Austria's neutrality to other States. In Austria's view, a State that unilaterally notified its neutrality retained full control to alter or abandon it. The purpose of the related footnote 295 was unclear, since it quoted a merely political statement by the President of the Russian Federation. With regard to paragraph 234 of the Commission's report concerning solemn declarations, Austria had concluded that the negative security guarantees delivered by major Powers during the special session of the General Assembly in 1978 had had binding effect.

79. Concerning chapter IX, on reservations to treaties, his delegation would like to reaffirm its position regarding the late formulation of a reservation and the widening of the scope of a reservation. It was irreconcilable with the basic principle *pacta sunt servanda* that a State could at any time unilaterally reduce the scope of its obligations under a treaty by means of a reservation. The work on reservations had arrived at a decisive point with the question of reservations incompatible with article 19 of the Vienna Convention on the Law of Treaties. Austria's position had always been consistent in that regard and was based on the considerations that there must be limits to unilateral definitions of the obligations resulting from a treaty; that a State by becoming a party to a treaty was bound to abide by the core obligations of the treaty, reflecting its object and purpose; that the *favor contractus* principle required that any declaration incompatible with the treaty must be regarded as invalid; and that a State making an impermissible reservation should not be allowed to benefit from a breach of article 19 of the Vienna Convention. If States were allowed to make any reservation they wished to a treaty under pretext of sovereignty, they could divest it of any substance, and it would be very difficult to identify the rights and obligations between two States parties resulting from a multilateral treaty.

80. The only remedy of a State party to an impermissible reservation would consist of a qualified objection to the reservation precluding the entry into force of the treaty as between the objecting State and the reserving State. However, that solution would work only for synallagmatic treaties and not for treaties establishing *erga omnes* obligations; in the case of human rights or similar treaties, it would create undesirable results. If an objecting State refused to enter into a treaty relationship with a reserving State, it would not prevent the reserving State from becoming a party to the treaty and benefiting from its reservation. It would only have the effect of making it impossible for the objecting State to invoke the responsibility of the reserving State for breaches of the treaty, so that it might for that reason decide to refrain from objecting. As a result, any State would be in position to formulate a reservation incompatible with the object and purpose of the treaty without risking an objection, and article 19 of the Vienna Convention would become devoid of substance.

81. Recent practice had shown that it was not always possible to determine from the outset whether a reservation was incompatible with the object and purpose of a treaty. In such cases, States parties should enter into a dialogue with the reserving State in order to clarify the scope of the reservations. In a case of recent practice with regard to the Rome Statute of the International Criminal Court, article 120 of which explicitly excluded reservations, a number of States had made interpretative declarations, at least one of which was considered by several States parties as amounting to a reservation. Their reactions had differed, but none of them had refused to enter into a treaty relationship with the declaring State. The case showed yet again that the only possible reaction to inadmissible reservations was to regard them as illegal and null and void.

82. With regard to chapter X, on the fragmentation of international law, the Commission's current report demonstrated the need to address the topic. The issues of self-contained regimes, the *lex specialis* rule, relevant rules of international law applicable in relations between the parties and hierarchy in international law all raised a number of still unresolved problems calling for further clarification. Austria shared the view that the term "self-contained regime" was somewhat of a misnomer, if it was taken to mean that a special regime was totally isolated from general international law. His delegation supported the proposed direction of work on the topic.

**Agenda item 140: Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts** (*continued*) (A/C.6/59/L.13)

83. **Mr. Awanbor** (Nigeria) said that his delegation wished to become a sponsor of draft resolution A/C.6/59/L.13.

84. **The Chairman** said he took it that the Committee wished to adopt draft resolution A/C.6/59/L.13 without a vote.

85. *Draft resolution A/C.6/59/L.13 was adopted.*

*The meeting rose at 12.35 a.m.*